III. REMARKS

Pursuant to current guidelines, a complete listing all claims presented in the application is provided above, with current claim status, and the text of all claims currently pending in the application. Currently amended claims (24 and 35) include revision markings to show changes from the immediately prior version thereof.

Claim Rejections under 35 USC § 102

Claims 24-28 and 32-41 were rejected in the Office Action under 35 U.S.C. § 102(b) as being anticipated by Omann (US 5,451,003).

Claim Rejections under 35 USC § 103

Claims 24 and 35 were rejected in the Office Action under 35 U.S.C. § 103(a) as being unpatentable over Mendenhall (US 4,095,284) in view of Omann.

Claims 30 and 31 were rejected in the Office Action under 35 U.S.C. § 103(a) as being unpatentable over Omann in view of Brock (US 5,451,003), Suzuki (JP 55142502 A) and what known art .

Allowable Subject Matter

Claim 29 was objected to as dependent upon a rejected base claim, but was indicated as allowable if rewritten with the limitation of the base claim and intervening claims.

Request for Reconsideration

Applicant thanks the Examiner for identifying claim 29 as allowable.

The Examiner is respectfully requested to reconsider rejection of the above-identified claims for the following reasons.

Omann Does Not Anticipate Claims 24-28 and 32-41

Omann discloses reduction of shingle material for use as paving for roads, etc. and patching potholes and pavement cracks. For this, Omann utilizes two hammermills 38 and 130. The first hammermill 38 produces shingle particles 120 "on the average in a range of between one-eighth inch to four inches" (col. 6, ln. 28-29) which is then "fed into a second hammermill 130 for reducing the shingle particles 120 to granular shingle material 136" (col. 6, ln. 31-32).

In the second paragraph of page 3 of the Office Action, it is suggested that Omann "separates" materials with a screen (68, 132 in the hammermills 38, 130) "wherein the material penetrating the screen can be regarded as fines ... and the materials not penetrating the screen can be regarded as the course material." However, this is not an accurate representation of the hammermills or the purpose or use of the screens. More accurately, each hammermill (38, 130) receives input material (32, 120) of one size range, and produces reduced-size material (120, 136). In the hammermill, the material is "pulverized by hammers and pushed through screen" (col. 6, ln. 8-9). Thus, the hammermills do not separate the material as the word "separate" would be reasonably understood or interpreted, but rather, at any given moment in the processing, the material that has not yet penetrated the screen in the hammermill is just that – it is the material that has not yet penetrated the screen. There is no separating that occurs in the hammermill; there is only material that has been processed through the hammermill and material that has not been processed through the hammermill. Thus, Omann does not anticipate the above-identified claims because there is no "separating" of shredded material into the designated fine and coarse materials as specified in the claims.

In the second paragraph of page 3 of the Office Action, it is further suggested, as basis for rejection of the above-identified claims, that because "Applicant teaches that an asphalt-

aggregate ratio can be established by setting a shredder size or a screen size opening, thus Omann can be interpreted as establishing and controlling an asphalt-aggregate ratio when teaching a shredder or a screen set to a specific size." However, this assertion fails to anticipate the recited limitations in the claims. Utilizing Applicant's teachings to interpret prior art is not a proper basis for claim rejection based on anticipation by such prior art. Further, the Office Action misrepresents Applicant's teachings in relation to the claim limitations, and reaches conclusions that are not logically supportable.

Claim 24 reads (in part): "establishing a target asphalt-aggregate ratio" (underlining added) and "controlling the asphalt-aggregate ratio in the fine material to obtain said target asphalt-aggregate ratio." In this regard, the Application teaches (among other things) that the asphalt-aggregate ratio of the fine material can be adjusted and/or controlled, and the target asphalt-aggregate ratio can be obtained by, for example, setting the size of the shredded material and/or by adjusting the screen size, angle, etc. The Application does not teach that the target asphalt-aggregate ratio can be "established" by these measures, nor is such a conclusion logical. The target ratio is the desired asphalt-aggregate ratio in the fine material. Shredded material and screen sizes will result in an asphalt-aggregate ratio that is dependent upon those variables, as well as other variables, but they will not establish the target asphalt-aggregate ratio. Establishing a target asphalt-aggregate ratio in fine material is simply not a consideration in Omann, let alone taught, suggested or implied to support a rejection based on anticipation of the rejected claims.

Therefore, Applicant respectfully submits that Omann does not anticipate claim 24 or the above-identified claims depending from claim 24.

One predominant additional variable that affects the resulting asphalt-aggregate ratio for particular shredded material and screen sizes is the aggregate and asphalt composition of the

shingle material that is shredded and then separated. Claim 45 has been added as depending from claim 24 to specify that the target asphalt-aggregate ratio is established independent of the asphalt-aggregate ratio in the initial asphalt shingle material.

Claim 35 reads (in part): "establishing a target ratio of fine material to coarse material" (underlining added). For reasons similar to those discussed above, Omann can not be reasonably interpreted as teaching, suggesting or anticipating the establishment of a target ratio of fine material to coarse material as contemplated in the present invention. Even if the hammermills in Omann are interpreted as separating devices (which Applicant believes is not a warranted interpretation), under such interpretation there is no ratio resulting from the hammermill of fine material to the coarse material suggested in the Office Action because the fine material is the continuous result of the process and the coarse material is that material in the hammermill which has not yet been processed. Therefore, Applicant submits that Omann does not anticipate claim 35 or the above-identified claims depending from claim 35.

In accordance with certain aspects of the invention, the fine and course materials are forwarded to separate stations for further processing. Claims 46 and 47 have been added as depending from claims 24 and 35, respectively, to include this aspect of the invention.

Mendenhall in view of Omann Does Not Render Obvious Claims 24 and 35

Mendenhall is cited in the Office Action, on page 4, second paragraph, as teaching "that it is known to crush and then separate asphalt-aggregate compositions into various size ranges, and thus it is implicit from the use of a crusher and the selection of a size range that an asphalt-aggregate ratio has been established and then controlled." However, for the reasons discussed above, selection of a size range, or separation into different sizes, does not establish a target asphalt-aggregate ratio, nor does it establish a target ratio of fine material to course material, as

recited in claims 24 and 35, respectively. In other words, selection and/or separation of shredded material based on size may result in a ratio, but such selection or separation does not establish the above-identified target ratios or necessarily control the resulting applicable ratios. Therefore, Mendenhall in view of Omann does not anticipate claims 24 or 35.

Omann in view of Brock and Suzuki Does Not Render Obvious Claims 30 and 31

As discussed above, Omann does not teach or suggest the elements of claim 24 from which claims 30 and 31 depend. Therefore Omann cannot render claims 30 and 31 obvious in view of Brock and Suzuki for the reasons cited in the Office Action. Further, Applicant respectfully disagrees with the interpretation of Brock and Suzuki as presented in the Office Action in relation to "ratios by weight and volume," and Applicant disagrees that a reasonable interpretation of Brock and Suzuki would contribute to rendering obvious claims 30 and 31. Further discussion on this subject is provided in the Specification and Applicant's response to the previous office action.

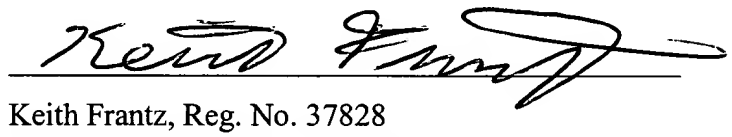
Summary

In summary, Omann, Mendenhall and the other prior art of record do not teach, suggest, or provide motivation for separating shredded asphalt roofing material into course material, and fine material having an asphalt-aggregate composition comprising both asphalt pieces and aggregate, or establishing target asphalt-aggregate ratios or target fine to course material ratios and taking steps to obtain such ratios as presented in the various claims with the additional elements recited therein. Nor does the prior art suggest the desirability of determining optimum or workable ranges for such ratios and sizes as specified in certain of the claims. Accordingly, Applicant believes the claims as currently presented patentably distinguish over Omann, Mendenhall and the other prior art of record, and are in a condition for allowance. Therefore,

Applicant respectfully requests reconsideration and withdrawal of the rejection of the claims currently under examination in the application.

If the Examiner, after considering this application in light of the present amendment and arguments presented, feels that a response to the amendment should be another final rejection of the application, and if he feels that a discussion with applicant's attorney might serve as a means of avoiding such a rejection and advancing the prosecution of this application to a favorable termination, he is respectfully requested to phone the undersigned attorney and to accord said attorney an opportunity of discussing this application before same is disposed of by a final rejection. The Examiner is assured of complete cooperation in the event that such courtesy is extended.

Respectfully submitted,



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